

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Raymond Pietrorazio,

Complainant,

Docket # FIC 2018-0341

against

Chairman, Connecticut Siting
Council; and Connecticut
Siting Council,

Respondents

May 22, 2019

The above-captioned matter was heard as a contested case on October 22, 2018, at which time the complainant and respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

After consideration of the entire record, the following facts are found and conclusions of law are reached:

1. The respondents are public agencies within the meaning of §1-200(1), G.S.
2. It is found that, by email dated May 24, 2018, the complainant requested that the respondents provide an opportunity to review “all documentation, logs, long accounts, safety protocols, validations, appointment schedules and any other documentation kept on site by the special inspector; as mandated by the Connecticut Siting Council (CSC) in its Decision and Order 1., f, vii, viii, for CSC Docket 192B, dated May 14, 2015 (hereinafter “the requested records”).”
3. It is found that, by email dated May 24, 2018, the respondents informed the complainant that they do not maintain the requested records, but provided the complainant with a hyperlink to contact information for the particular approved special safety inspector, Paul Hayes.
4. It is found that, by email dated June 9, 2018, the complainant thanked the respondents for the contact information and informed them that the inspector and the project with which he is affiliated, CPV Towantic, LLC (hereinafter “CPV”), did not provide access to the records that the complainant seeks; the complainant requested that the respondents assist him in his pursuit of the requested records.

5. It is found that, by email dated June 11, 2018, the respondents informed the complainant that neither the inspector nor CPV are public agencies subject to the Freedom of Information (hereinafter "FOI") Act, and declined to assist him in his efforts to obtain access to the requested records from those parties.

6. By email dated and filed on June 26, 2018, the complainant appealed to this Commission, alleging that the respondents violated the FOI Act by failing to provide him with access to the requested records and causing "the non-disclosure of important public safety records."

7. Section 1-200(5), G.S., defines "public records or files" as:

any recorded data or information relating to the conduct of the public's business prepared, owned, used, received or retained by a public agency, or to which a public agency is entitled to receive a copy by law or contract under section 1-218, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

8. Section 1-210(a), G.S., provides in relevant part that:

Except as otherwise provided by any federal law or state statute, all records maintained or kept on file by any public agency, whether or not such records are required by any law or by any rule or regulation, shall be public records and every person shall have the right to (1) inspect such records promptly during regular office or business hours . . . (3) receive a copy of such records in accordance with section 1-212.

9. Section 1-212(a), G.S., provides in relevant part that "any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record."

10. At the hearing in this matter, the complainant conceded, and it is found, that the respondents have never maintained the requested records.

11. Nevertheless, on brief, the complainant contends that the respondents should be required to obtain the records from CPV for several reasons.

12. The complainant first contends that, pursuant to the respondents' Decision and Order, dated May 14, 2015, in CPV Towantic, LLC Motion to Reopen and Modify June 23, 1999 Certificate of Environmental Compatibility and Public Need based on Changed Conditions, Docket 192B (hereinafter "Docket 192B"), the respondents required CPV to "provide detailed

specifications (narratives/drawings) indicating the location and procedures to be used during the pipe cleaning process, including any necessary worker safety exclusion zones.”

13. Additionally, Docket 192B also sets forth:

The Certificate Holder shall retain for the duration of construction a special inspector to assist the fire marshal in reviewing the construction plans and conducting inspections sufficient to ensure compliance with recommended standards pursuant to CGS §16-50ii and submit the contact information for the special inspector Council.

14. In turn, §16-50ii, G.S., provides:

(b) The Connecticut Siting Council shall not issue a certificate to build a facility described in subdivision (3) of subsection (a) of section 16-50i unless a person applying for such certificate demonstrates to the satisfaction of the council that such person has: (1) retained, for the duration of the construction project, at least one special inspector to assist the municipal fire marshal in reviewing construction plans and conducting inspections during construction of the electric generating facility to ensure compliance with the recommended standards....

(c) A special inspector retained under subsection (b) of this section shall have the following duties: (1) to assist the local fire marshal in said fire marshal's review and approval of methods for cleaning the interior of gas piping; (2) to approve an appropriate safety plan for any nonflammable gas blows conducted at the electric generating facility....

15. The complainant contends that CPV and the safety inspector are required under Docket 192B and §16-50ii, G.S., to provide the requested records to the respondents and that the respondents have a reciprocal obligation under such provisions to obtain the requested records from CPV and the safety inspector, to be available for public inspection. Even assuming, *arguendo*, that such contentions are accurate, in essence the complainant is asking the Commission to enforce the provisions of Docket 192B and §16-50ii, G.S., as he interprets them. The Commission has no authority to enforce the Decision and Order of the respondents, nor does it have jurisdiction to enforce §16-50ii, G.S.

16. Next, the complainant cites to the respondents' Findings of Fact, dated May 14, 2015, in CPV Towantic, LLC Motion to Reopen and Modify June 23, 1999 Certificate of Environmental Compatibility and Public Need based on Changed Conditions, Docket 192B (hereinafter "Docket 192B Findings of Fact"), which provided:

173. CPV would comply with the most current Occupational Safety and Health Administration standards, including National Fire Protection Association 56 PS “Standard for Fire And Explosion Prevention During Cleaning and Purging of Flammable Gas Pipeline System,” which requires that only inert gasses of compressed air be used for all cleaning of pipes. Flammable natural gas would not be used to clear CPV’s natural gas lines. CPV anticipates using compressed air for such a purpose. Such measures would be in compliance with the findings and recommendations in the executive report issued by the Thomas Commission.....

176. CPV would retain a special inspector to assist the municipal fire marshal in reviewing the construction plans and conducting inspections pursuant to CGS §16-50ii....

17. In turn, National Fire Protection Association 56, Standard for Fire and Explosion Prevention During Cleaning and Purging of Flammable Gas Piping Systems (hereinafter “NFPA 56”) provides:

1.2 Purpose. This standard provides minimum safety requirements for the cleaning and purging of flammable gas piping systems, including cleaning new or existing piping systems into or out of service, from the point of delivery or source valve to the equipment isolation valve....

4.1.2 Pressure Testing and Inspection. Prior to cleaning or purging, piping systems shall be inspected and pressure tested to determine that the materials, design, fabrication, and installation practices comply with the requirements of this standard and the intended application....

4.4 Cleaning and Purging Procedures. Written cleaning and purging procedures shall be developed and implemented by a competent person....

4.4.1 The written procedure for each cleaning and purging activity shall address, at a minimum, the following items: (1) Scope of work and site specific purge procedure development...(2) Environmental conditions and work locations...(3) Communication plans... (4) Control of ignition sources...(5) Pre-purge piping system assessment...(6) Purge monitoring and instrumentation...(7) Protection and rescue of Personnel...;

4.5 Safety Validation. A written safety validation shall be performed for cleaning and purging procedures....

4.7 Documentation. 4.7.1 Cleaning and purging procedures shall be documented and available at the job site....

4.7.3 The safety validation and the cleaning and purging procedures shall be retained for at least 2 years following completion of the activity...

7.1 Charging Piping System with Flammable Gas. 7.1.1 Where gas piping containing air is placed in operation, the air in the piping first shall be displaced with flammable gas in accordance with section 7.2...

18. The Commission notes that, pursuant to NFPA 56, cleaning and purging procedures shall be available at the job site. However, even assuming that NFPA 56 and Docket 192B Findings of Fact do require that the requested records in this matter be provided to the respondents, the Commission cannot enforce the requirements of such documents.

19. Section 16-50u, G.S., provides in relevant part that the respondents "...shall take reasonable steps to insure that each facility for which a certificate has been issued is constructed, maintained and operated in compliance with such certificate and any other standards established pursuant to this chapter." The complainant contends that, pursuant to this statute, it is reasonable for the respondents to obtain the records at issue in this matter from CPV. However, certainly it is for the respondent Council, and not the Commission, to determine what is reasonable under §16-50ii, G.S.

20. The complainant also contends that §§1-218 and 1-200(11), G.S., provide a basis to require that the respondents obtain the requested records from CPV, and provide them to him.

21. Section 1-218, G.S., provides:

Each contract in excess of two million five hundred thousand dollars between a public agency and a person for the performance of a governmental function shall (1) provide that the public agency is entitled to receive a copy of records and files related to the performance of the governmental function, and (2) indicate that such records and files are subject to the Freedom of Information Act and may be disclosed by the public agency pursuant to the Freedom of Information Act. No request to inspect or copy such records or files shall be valid unless the request is made to the public agency in accordance with the Freedom of Information Act. Any complaint by a person who is denied the right to inspect or copy such records or files shall be brought to the Freedom of Information Commission in accordance with the provisions of sections 1-205 and 1-206.

22. Section 1-200(11), G.S., provides that "Governmental function" as it is used in §1-218, G.S., means:

... the administration or management of a program of a public agency, which program has been authorized by law to be administered or managed by a person, where (A) the person receives funding from the public agency for administering or managing the program, (B) the public agency is involved in or regulates to a significant extent such person's administration or management of the program, whether or not such involvement or regulation is direct, pervasive, continuous or day-to-day, and (C) the person participates in the formulation of governmental policies or decisions in connection with the administration or management of the program and such policies or decisions bind the public agency. "Governmental function" shall not include the mere provision of goods or services to a public agency without the delegated responsibility to administer or manage a program of a public agency.

23. On brief, the complainant argues that the safety inspector described in paragraph 3, above, has the responsibility to administer and manage a program of the respondents, within the meaning of §§1-218 and 1-200(11), G.S., and that therefore the Commission should require that the respondents retrieve the records at issue in this matter under those provisions. However, it is found that the respondents have no contract with CPV and/or the safety inspector. Rather, the respondents granted a certificate to CPV, as described in paragraph 12, above. Therefore, it is concluded that §§1-218 and 1-200(11), G.S., do not apply under the facts and circumstances of this case.

24. Finally, the complainant contends that the safety inspector is the functional equivalent of a "public agency" under the Woodstock test, and that therefore the respondents should be required to retrieve the records from him and provide them to the complainant. However, the allegation that the safety inspector is the functional equivalent of a public agency was not fairly raised in the complaint. Additionally, the safety inspector was not named as a party to the complaint, and the request at issue was not made to the safety inspector. Accordingly, such allegation will not be further addressed herein.

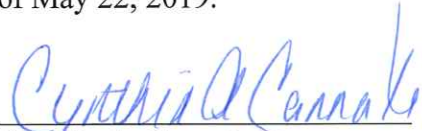
25. The Commission acknowledges that the complainant seeks the records at issue because of a sincere belief that the public has an interest in them due to their relevance to public safety. However, it is clear from the record in this matter that the respondents do not maintain the records, and have never maintained them. Accordingly, it is found that such records are not public records within the meaning of §1-200(5), G.S.

26. Based on the record in this matter, it is concluded that the respondents did not violate the FOI Act, as alleged in the complaint.

The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. The complaint is hereby dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of May 22, 2019.



Cynthia A. Cannata
Acting Clerk of the Commission

PURSUANT TO SECTION 4-180(c), G.S., THE FOLLOWING ARE THE NAMES OF EACH PARTY AND THE MOST RECENT MAILING ADDRESS, PROVIDED TO THE FREEDOM OF INFORMATION COMMISSION, OF THE PARTIES OR THEIR AUTHORIZED REPRESENTATIVE.

THE PARTIES TO THIS CONTESTED CASE ARE:

RAYMOND PIETRORAZIO, 764 Charcoal Avenue, Middlebury, CT 06762

CHAIRMAN, CONNECTICUT SITING COUNCIL; AND CONNECTICUT SITING COUNCIL, c/o Assistant Attorney General Robert L. Marconi, Office of the Attorney General, 10 Franklin Square, New Britain, CT 06051



Cynthia A. Cannata
Acting Clerk of the Commission